

THE HONORABLE BENJAMIN H. SETTLE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

COLUMBIA RIVERKEEPER, a
Washington non-profit corporation, ,

Plaintiff,

v.

**CHINOOK VENTURES, INC., DBA
CHINOOK VENTURES, LV**, a Nevada
Corporation,

Defendant.

Case No. 09-5707 (BHS)

CONSENT DECREE

WHEREAS on November 13, 2009, Plaintiff Columbia Riverkeeper ("CRK") filed a Complaint for Declaratory and Injunctive Relief and Civil Penalties against Defendant Chinook Ventures, Inc., dba Chinook Ventures LV ("Chinook Ventures") alleging violations of the Clean Water Act, 33 U.S.C. §1251 et seq. related to discharges of stormwater, process wastewater and/or pollutants from Defendant's facility located at 4029 Industrial Way, Longview, Washington ("Facility") and the management of this Facility seeking declaratory and injunctive relief, civil penalties, and attorney fees and costs; and

WHEREAS, counsel for the parties to this action have engaged in discussions relating to the potential settlement of this litigation, which discussions have included an assessment of the facts surrounding the alleged violations; and

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1 WHEREAS, Plaintiff and Defendant agree that settlement of these matters is in the
2 best interest of the parties and the public, and that entry of this Consent Decree (the
3 "Decree") without additional litigation is the most appropriate means of resolving these
4 actions; and

5 WHEREAS, Plaintiff and Defendant, by their authorized counsel and without trial or
6 final adjudication of the issues of fact or law, consent to entry of this decree to avoid the
7 risks of litigation and to fully and finally resolve the controversy described herein.

8 NOW THEREFORE, without trial of any issue of fact or law, and without admission
9 by Defendant of the facts or violations alleged in the Complaint, and upon consent of the
10 parties, and upon consideration of the mutual promises contained in this decree, it is hereby

11 ORDERED, ADJUDGED AND DECREED as follows:

12 1. This Court has jurisdiction over the parties and subject matter of the action;

13 2. Each undersigned representative for the parties certifies that he or she is fully
14 authorized by the party represented to enter into the terms and conditions of this Decree and
15 to legally bind the parties.

16 3. This Decree constitutes a full and complete settlement of the claims alleged in
17 the Complaint in this case and all other claims, known and unknown, that relate to the
18 Facility and could be asserted under the Clean Water Act arising from operations of the
19 Facility up through and until entry of this Consent Decree. Plaintiff reserves its rights with
20 respect to all violations of the Clean Water Act occurring at or related to the Facility after the
21 date of entry of this Consent Decree.

22 4. This Decree shall not constitute evidence in any proceeding, an admission or
23 adjudication with respect to any allegation of the Complaint, any fact or conclusion of law
24 with respect to any matter alleged in or arising from the Complaint, or the admission or
25 evidence of any wrongdoing or misconduct on the part of the Defendant or its successors.

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1 5. In full and complete satisfaction of the claims covered by the Complaint filed
2 in this case and all other claims covered by this Decree, as described in Paragraph 3,
3 Defendant agrees to abide by and be subject to the following terms and conditions, until
4 Defendant is no longer the operator of the Facility:

5 a. Defendant will comply with its National Pollutant Discharge
6 Elimination System Permit ("NPDES permit"), including limiting the handling of
7 bulk storage activities to those covered by its NPDES permit.

8 b. Defendant shall provide a copy of all correspondence with the
9 Washington Department of Ecology, including Discharge Monitoring Reports, to
10 Plaintiff for a period of three years from the date of this Consent Decree, on a
11 monthly basis.

12 c. Defendant will submit a complete NPDES permit renewal
13 application by March 1, 2011.

14 d. Defendant will hire a third-party expert engineer to make
15 *recommendations for petroleum coke bulk storage, including best management*
16 *practices to control storm water runoff.* Plaintiff must approve this expert and
17 Defendant agrees to implement all recommendations from this expert.

18 e. Defendant will hire a third-party expert to inspect the wastewater
19 treatment plant and make recommendations for upgrades, as necessary. Plaintiff
20 must approve this expert and Defendant agrees to implement all recommendations
21 from this expert.

22 f. Defendant will not import or export petroleum coke or coal until
23 those activities are explicitly covered by an NPDES permit and have been through
24 State Environmental Policy Act ("SEPA") review by Cowlitz County.

25 g. Defendant will pay a stipulated penalty of \$2,000 per day per
26 violation for each violation of the terms of its NPDES permit or this Consent Decree

1 for which the Washington Department of Ecology has not assessed a penalty. This
2 penalty shall be payable to the Washington Toxics Coalition and applicable to the
3 project described below in paragraph 6.

4 6. Within thirty (30) days of the entry of this Consent Decree, Defendant shall
5 make a payment of \$190,000 to the Washington Toxics Coalition for the project titled
6 "Targeted Toxics Monitoring and Toxics Reduction in the Lower Columbia River." The
7 payment to Washington Toxics Coalition shall be made by check payable and mailed to
8 Washington Toxics Coalition, attn: Laurie Valeriano, 4649 Sunnyside Ave., N., Suite 540,
9 Seattle, WA 98103.

10 7. Within thirty (30) days of the entry of this Consent Decree, Defendant shall
11 pay Plaintiff's reasonable attorney fees and costs in the amount of \$112,666.38 by check
12 payable and mailed to Plaintiff's counsel as set forth in Paragraph 13 of this Consent Decree
13 in full and complete satisfaction of Plaintiff's claim for attorneys fees and costs under the
14 Clean Water Act.

15 8. The Court shall retain jurisdiction over this matter and allow this case to be
16 reopened without an additional filing fee for the purpose of enabling the parties to this
17 Decree to apply to the Court for any further Order that may be necessary to construe, carry
18 out, enforce compliance or resolve any dispute regarding the terms or conditions of this
19 Decree. In the event Plaintiff believes Defendant is not in compliance with this Decree,
20 Plaintiff shall provide written notice to Defendant describing the asserted noncompliance.
21 Defendant shall thereafter have 30 days to respond in writing describing any corrective
22 action taken or contesting the asserted violation. If after Defendant's response the parties
23 remain in dispute regarding implementation of or compliance with this Decree, the parties
24 shall first attempt to informally resolve the dispute through meetings between the parties,
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1 which shall take place within 14 days after Defendant's written response. If no resolution is
2 reached through informal meetings, the parties may resolve the dispute by filing motions
3 with the Court.

4 9. The parties recognize that no consent judgment can be entered in a Clean
5 Water Act suit in which the United States is not a party prior to 45 days following the receipt
6 of a copy of the proposed consent judgment by the U.S. Attorney General and the
7 Administrator of the U.S. EPA pursuant to 33 U.S.C. §1365(c)(3). Upon signing of this
8 Consent Decree by the parties, Plaintiff shall serve copies of it upon the Administrator of the
9 U.S. EPA and the U.S. Attorney General.

10 10. This Consent Decree shall take effect on the date it is entered by the Court.
11 This Consent Decree shall terminate sixty (60) days following completion of all obligations
12 under it.

13 11. This Consent Decree may be modified only upon the written consent of the
14 parties and the approval of the Court.

15 12. If for any reason the Court should decline to approve this Decree in the form
16 presented, this Decree and the settlement contained within shall be voidable at the sole
17 discretion of either party. The parties agree to continue negotiations in good faith in an
18 attempt to cure any objection raised by the Court to entry of this Decree.

19 13. Notifications or copies required by this Decree shall be made to:

20 For Plaintiff:

21 R. Scott Jerger
22 Field Jerger LLP
23 621 SW Morrison, Suite 12325
24 Portland, Oregon 97205

For Defendant:

Laura Maffei
Schwabe, Williamson & Wyatt
1211 SW 5th Avenue, Suite 1900
Portland, Oregon 97204

Dated and entered this 15 day of October, 2010.

By: 

BENJAMIN H. SETTLE
U.S. DISTRICT JUDGE

COLUMBIA RIVERKEEPER

Signature: 

Title: Executive Director

Date: Oct. 22, 2010

CHINOOK VENTURES, INC.

Signature: 

Title: Director

Date: Oct 28, 2010